



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0283; FRL-9930-68-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the Minor New Source Review (NSR) State Implementation Plan (SIP) for Portable Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on March 19, 2010 and July 2, 2010. These revisions to the Texas SIP revise the minor New Source Review (NSR) program to provide for the relocation and change of location of permitted portable facilities, establish definitions related to portable facilities, and establish public participation for changes of location to portable facilities. The EPA proposes to find that these revisions to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and are consistent with our regulations and policy for minor NSR. The EPA is proposing these actions under section 110 of the Act.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2010-0283, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitted comments.
- E-mail: Ms. Aimee Wilson at *wilson.aimee@epa.gov*.
- Mail or delivery: Ms. Aimee Wilson, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2010-0283. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* website is an "anonymous access" system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your

comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Aimee Wilson, (214) 665-7596; email wilson.aimee@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Wilson or contact Mr. Bill Deese at (214) 665-7253.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

A. CAA and SIPs

The Act at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the state SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and minor NSR.

The minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source/major modification thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which

a source is located. Any submitted SIP revision, including revisions to a minor NSR program, must meet the applicable requirements for SIP elements in section 110 of the Act, and be consistent with all applicable statutory and regulatory requirements.

The EPA is proposing to approve portions of the March 19, 2010 and July 2, 2010 Texas SIP submittals as revisions to the Texas minor NSR SIP for portable facilities. This action only addresses the provisions relevant to the portable facilities program – 30 Texas Administrative Code (TAC) sections 116.120 and 116.178 submitted on March 19, 2010 and 30 TAC section 39.402(a)(12) submitted on July 2, 2010. These provisions collectively establish the definitions applicable to portable facilities, criteria for relocating and changing the location of portable facilities, and public notice requirements for portable facilities.

B. Overview of the Portable Facilities Program

1. March 19, 2010 SIP Submittal

The TCEQ submitted to the EPA revisions to the State Implementation Plan (SIP) to address definitions related to portable facilities and rules regarding the relocation and changes of location of portable facilities on March 19, 2010. Texas previously adopted the revisions to the SIP on February 12, 2010; specifically definitions pertaining to portable facilities at 30 TAC section 116.20 and provisions for the relocation and change of location of portable facilities at 30 TAC section 116.178.

2. July 2, 2010 SIP Submittal

On June 2, 2010, the TCEQ adopted revisions to the State Implementation Plan to adopt amendments made to the 30 TAC Chapter 39 Public Notice provisions for NSR permits, including provisions specific to portable facilities at 30 TAC section 39.402(a)(12). The revisions were submitted to the EPA on July 2, 2010. As detailed in the Technical Support

Document (TSD), this action will only address 30 TAC section 39.402(a)(12); all other portions of this SIP submittal have been addressed by the EPA in separate actions.

II. The EPA's Evaluation

The SIP submittals being evaluated as part of this rulemaking provide for the movement of existing portable facilities permitted under the Texas minor NSR program; therefore, the provisions for the change of location or relocation of portable facilities are evaluated against the federal requirements for minor NSR at 40 CFR 51.160 – 51.164 and in conjunction with the existing SIP-approved provisions of the Texas minor NSR permitting program. All portable facilities are permitted under the existing minor NSR SIP provisions in Chapter 116. The portable facilities are either permitted through a case-by case minor NSR permit subject to the requirements under 30 TAC sections 116.110 – 116.115 or through a Standard Permit issued under 30 TAC Chapter 116, Subchapter F. The EPA has previously approved these minor NSR permitting mechanisms as consistent with Federal minor NSR requirements.

The TCEQ issues the underlying minor NSR portable facility permits to be protective of the NAAQS and increment. 30 TAC sections 116.20 and 116.178 provide that once a permit has been issued to a portable facility, the facility can be moved either through a change of location or a relocation. A change of location occurs when a portable facility is moved to a new location and is required to go through the SIP-approved minor NSR public notice requirements of Chapter 39. A relocation of a portable facility is movement of the portable facility without public notice under Chapter 39. Relocations occur in one of two scenarios. First, portable facilities can be relocated to a location in support of a public works project in which the new site is located in or contiguous to the right-of way of the public works project. The second possibility, is that a portable facility relocates to a site in which a portable facility has previously been located at any

time during the previous two years and the site was subject Chapter 39 public notice requirements. Public notice requirements for the change of location or relocation of a portable facility are established at 30 TAC section 39.402(a)(12). Our evaluation summarized below, and detailed more fully in our accompanying TSD, demonstrates that the portable facilities program satisfies applicable requirements for minor NSR programs.

The change of location or relocation of a portable facility permit does not change the underlying portable facility permit requirements and does not establish a new minor NSR permit. Rather, these provisions enable an existing permitted facility to move as provided under the portable designation. Under both a change of location or relocation, the minor NSR permit (either a case-by-case minor NSR permit issued under 30 TAC sections 116.110 -116.115 or a Standard Permit issued under 30 TAC Chapter 116, Subchapter F) was required to conduct a health impact and air quality analysis prior to issuance. The TCEQ's record demonstrates that emissions associated with portable facilities are typically minimal and the underlying permit contains the appropriate emission limits, permit terms, and conditions to ensure that the portable facility will have minimal environmental impacts at the property line. Additionally, the TCEQ has the responsibility to review each request for a change of location or relocation of a portable facility; the TCEQ will deny a request for a change of location or relocation if movement will result in adverse impacts on attainment or maintenance of the NAAQS or increment violations.

The EPA's minor NSR regulations require public notice for each minor NSR permit. Because neither the change of location nor relocation of a portable facility results in a new minor NSR permit than the permit that was originally public noticed, there is no specific federal requirement for a new public notice. Relocations of portable facilities with minor NSR permits can occur since there is no underlying change to the permit terms and conditions and the TCEQ

evaluates each requested relocation for adverse environmental impacts on attainment or maintenance of the NAAQS or increment violations.

The EPA has also evaluated the March 19, 2010 and July 2, 2010 revisions pertaining to Portable Facilities under section 110(l) of the Act. We have preliminarily determined that the TCEQ satisfied all procedural requirements pursuant to section 110(l) as detailed in our accompanying TSD. Further, the EPA has preliminarily determined that the Portable Facilities SIP revisions satisfy the minimum requirements for a minor NSR program, including adequate provisions for legal enforceability and public participation to ensure protection of the control strategy and any applicable NAAQS. The Portable Facilities program also contains sufficient safeguards to prevent circumvention of Major NSR permitting requirements. Therefore, we find that the Portable Facilities program is protective of the NAAQS, increment, attainment and reasonable further progress, and any other applicable control strategy requirements and will therefore satisfy the requirements of section 110(l) of the Act.

III. Proposed Action

The EPA is proposing to approve portions of the March 19, 2010 and July 2, 2010, revisions to the Texas SIP to revise the minor NSR program for portable facilities. We have evaluated the SIP submissions for whether they meet the Act and 40 CFR part 51, and are consistent with EPA's interpretation of the relevant provisions. Based upon our evaluation, the EPA is preliminarily concluding that the March 9, 2010 and July 2, 2010, SIP revision submittals for portable facilities and public participation for portable facilities meet the applicable requirements of the Act and 40 CFR part 51. Therefore, EPA is proposing to approve the following provisions pertaining to portable facilities into the Texas minor NSR SIP:

- 30 TAC section 116.20 adopted on February 10, 2010, submitted on March 19, 2010;

- 30 TAC section 116.178 adopted on February 10, 2010, submitted on March 19, 2010; and
- 30 TAC section 39.402(a)(12) adopted on June 2, 2010, submitted on July 2, 2010.

The EPA is proposing this action under section 110 of the Clean Air Act (CAA). After review and consideration of public comments, we will take final action on the SIP revisions that are identified herein.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this document merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Portable facilities, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 8, 2015.

Ron Curry,
Regional Administrator, Region 6.

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